Production Workers Union of Chicago & Vicinity, Local 707, an affiliate of National Production Workers Union (Mavo Leasing Co.) *and* Faustino Ramos *and* Francisco Murillo. Cases 13–CB–12897 and 13–CB–12911

August 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

On September 18, 1992, Administrative Law Judge Richard A. Scully issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges that the Respondent violated Section 8(b)(1)(A) and (2) by requesting and causing the Employer to discharge employees Faustino Ramos, Michael Beal, and Francisco Murillo, nonmembers of the Respondent, because of their failure to pay union dues without first having notified them of their right to object to the Respondent's expenditures that are not germane to collective-bargaining under *Communications Workers v. Beck*, 487 U.S. 735 (1988). The judge found that Beck did not impose affirmative notice obligations on the Respondent and dismissed the complaint. We reverse.

I. FACTS

On January 23, 1990, the Respondent notified employees Ramos, Beal, and Murillo that they had failed to pay dues owed by them to the Respondent and that, unless they paid their dues, they would be discharged pursuant to a union-security provision contained in the Respondent's bargaining agreement with the Employer. The notifications sent to these individuals set forth the specific amount of their dues arrearages.

On February 8, 1990, following the employees' continued failure to pay the dues arrearages, the Employer, at the Respondent's request, discharged Ramos, Beal, and Murillo for nonpayment of dues. There is no evidence that the Respondent had any procedure in place notifying employees of their rights under *Beck*, or that it maintained any accounting procedure identifying nonrepresentational expenditures, or otherwise made any effort at any time to notify Ramos, Beal, or Murillo of their rights under *Beck*. No exceptions were filed to the judge's findings that, at all relevant times, Ramos, Beal, and Murillo were not members of the Respondent. Further, no exceptions were filed to the judge's finding that the Respondent was expending funds for nonrepresentational purposes and activities during the year preceding the discharges.[1]

II. DISCUSSION

In *Communications Workers v. Beck*, the Supreme Court held that the Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective-bargaining, contract administration, or grievance adjustment. In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board found that the union violated its duty of fair representation by failing to provide notice of *Beck* rights to unit employees covered by a union-security agreement who were not members of the union. The Board held that

> when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. [320 NLRB at 233.]

Under *California Saw*, a union is required to tender a notice of *Beck* rights to nonmember unit employees before it can subject employees to the monetary obligations imposed by a union-security provision. In the present case, it is undisputed that the Respondent at no time tendered a notice of *Beck* rights to nonmembers Ramos, Beal, or Murillo. Accordingly, it follows that, in the absence of such notice, the Respondent could not seek to enforce the union-security provision by causing or seeking to cause the discharge of Ramos, Beal, and Murillo in order to obligate them to pay dues and fees under that provision. In these circumstances, the Respondent violated Section 8(b)(1)(A) and (2) by requesting and causing the Employer to discharge Ramos, Beal, and Murillo through enforcement of the union-security provision.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease

[1] In the absence of exceptions, we find it unnecessary to consider or pass on whether the Respondent's expenditures for organizing expenses were nonrepresentational, as stated in the judge's decision.

and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent caused the Employer, Mavo Leasing, Inc., to unlawfully discharge Faustino Ramos, Michael Beal, and Francisco Murillo,[2] we shall order the Respondent to notify the Employer in writing, with copies to Ramos, Beal, and Murillo, that it has no objection to their reinstatement and that it affirmatively requests their reinstatement. We shall also order the Respondent to notify Ramos, Beal, and Murillo that they are not subject to discharge for nonpayment of dues in the absence of notification of their rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988). We shall also order the Respondent to make Ramos, Beal, and Murillo whole for any loss of wages and benefits they may have suffered as a result of the Respondent's conduct until such time as they either are reinstated by the Employer to their former or substantially equivalent positions, or until they obtain substantially equivalent employment elsewhere, less net interim earnings. *Electrical Workers IBEW Local 3 (Fischbach & Moore)*, 309 NLRB 856 (1992); *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773 (1981). The amount of backpay shall be computed with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Production Workers Union of Chicago & Vicinity, Local 707, an affiliate of the National Production Workers Union, Forest Park, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Mavo Leasing Co. to discharge Faustino Ramos, Michael Beal, and Francisco Murillo because of their failure to pay union dues, without first having notified each of them of their rights as nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. In addition, this notice must include sufficient information to enable these employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Faustino Ramos, Michael Beal, and Francisco Murillo for any loss of wages or other rights and benefits they may have suffered as the result of its causing of their discharge, in the manner set forth in the remedy section of this Decision and Order.

(b) Notify Mavo Leasing Co., in writing, with a copy to Faustino Ramos, Michael Beal, and Francisco Murillo, that it has no objection to their employment, and that it requests that they be reinstated.

(c) Notify Faustino Ramos, Michael Beal, and Francisco Murillo that it will not cause or attempt to cause Mavo Leasing Co. to discharge them for nonpayment of dues without first having notified them of their rights as nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. In addition, this notice must include sufficient information to enable these employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(d) Within 14 days from the date of this Order, remove from its files, and ask Mavo Leasing Co. to remove from its files, any reference to the discharges of Faustino Ramos, Michael Beal, and Francisco Murillo, and within 3 days thereafter notify the employees in writing that it has done so and that it will not use the discharges against them in any way.

(e) Within 14 days after service by the Region, post at its business office and meeting hall copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 14 days after service of the Region, deliver to the Regional Director for Region 13 signed copies of the notice in sufficient numbers to be posted by Mavo Leasing Co. in all places where notices to employees are customarily posted, if it is willing.

[2] The complaint allegations are limited to the Respondent's requesting and causing the discharge of Ramos, Beal, and Murillo. The complaint does not allege a failure to provide nonmember employees with notice of their *Beck* rights generally other than in connection with these discharges. Accordingly, the remedy addresses the violations as alleged.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause or attempt to cause Mavo Leasing Co. to discharge Faustino Ramos, Michael Beal, and Francisco Murillo because of their failure to pay union dues, without first having notified each of them of their rights as nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. The notice must include sufficient information to enable these employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Faustino Ramos, Michael Beal, and Francisco Murillo for any loss of wages or other rights and benefits as a result of having caused their discharge, with interest.

WE WILL notify Mavo Leasing Co. that we have no objection to the employment of Faustino Ramos, Michael Beal, and Francisco Murillo and WE WILL request that Mavo Leasing Co. reinstate them.

WE WILL notify Faustino Ramos, Michael Beal, and Francisco Murillo that we will not cause or attempt to cause Mavo Leasing Co. to discharge them for nonpayment of dues without first having notified them of their rights as nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. The notice must include sufficient information to enable these employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL, within 14 days from the date of the Board's Order remove from our files, and ask Mavo Leasing Co. to remove from its files, any reference to the discharges of Faustino Ramos, Michael Beal, and Francisco Murillo and WE WILL within 3 days thereafter, notify them in writing that we have done so and that we will not use the discharges against them in any way.

PRODUCTION WORKERS UNION OF CHICAGO & VICINITY, LOCAL 707, AN AFFILIATE OF NATIONAL PRODUCTION WORKERS UNION

Linda McCormick, Esq., for the General Counsel.
Cora Vaughn, Esq., of Gary, Indiana, for the Respondent.

DECISION

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed by Faustino Ramos on March 15, 1990, and by Francisco Murillo on March 29, 1990, the Acting Regional Director, Region 13, National Labor Relations Board (the Board) issued a complaint on May 24, 1990, alleging that Production Workers Union Chicago & Vicinity, Local 707, an affiliate of National Production Workers Union (the Respondent), committed certain violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Chicago, Illinois, on September 16, 1991, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

At all times material, Mavo Leasing, Inc. (the Employer) was a corporation with an office and place of business in Hillside, Illinois, where it was engaged in leasing personnel to meatpacking plants. During the calendar year 1990, a representative period, in the course of its business operations, the Employer derived gross revenues in excess of $500,000 and performed services valued in excess of $500,000 for enterprises within the State of Illinois, including Donna's Meat Packing (Donna), a company which is also engaged in interstate commerce. The Respondent admits, and I find, that Mavo Leasing, Inc. is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

In June 1988, the Respondent was certified by the Board as the exclusive collective-bargaining representative of the

Employer's employees in a unit at the Donna plant in Forest Park, Illinois, following an election in which the employees chose to be represented by the Respondent over the competing Beef Boners Union, Local 100A. Thereafter, the Employer and the Respondent entered into a collective-bargaining agreement, effective from April 23, 1989, through April 19, 1992. The agreement contained a union-security clause requiring as a condition of employment membership in the Respondent within 30 days of the start of employment.

Employees Faustino Ramos, Michael Beal, and Francisco Murillo were discharged by the Employer on February 8, 1990, at the request of the Respondent because of their failure to pay back dues. The complaint alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing the Employer to discharge these employees who were not members of the Respondent Union and who were not first given notice informing them that: (1) a percentage of the Union's funds were spent for nonrepresentational purposes during its previous fiscal year; (2) nonmembers could object to having their union-security payments spent for such purposes; and (3) nonmembers who objected would only be charged for representational activities and would be provided with detailed information concerning representational and nonrepresentational expenditures. It is also alleged that the Respondent violated the Act by requesting that the employer discharge Ramos on February 8, 1990, even though its president, Sam Cozzo, had previously granted Ramos an extension of time in which to tender his back dues.

In *Communications Workers of America v. Beck*,[1] the Supreme Court held that the proviso to Section 8(a)(3) of the Act does not permit a union, over the objections of dues-paying, nonmember employees, to expend funds collected pursuant to a union-security clause on activities unrelated to collective bargaining, contract administration, or grievance adjustment. The General Counsel takes the position that the *Beck* decision required the Union to give such employees a notice (*Beck* notice) similar to that outlined above. The Respondent contends that *Beck* did not impose any such affirmative obligation on it and that, even if it did, it did not violate the Act as alleged because the three employees in question were members of the Union and there is no evidence that any of them objected to the use of their dues for nonrepresentational purposes.

B. *The Employees' Union Membership*

The Respondent contends that the Ramos, Beal, and Murillo have been members of the Union since the time they worked at the Donna plant as employees of A.M.A. Leasing, Ltd. The General Counsel contends that their membership in the Union, if any, was terminated and has never been renewed. Mavo Leasing is the successor to A.M.A., which in 1984 entered into a contract to provide an employee work force at the Donna plant. A.M.A. recognized the Respondent Union as its employees' bargaining representative and a collective-bargaining agreement with a union-security clause was signed in August 1984. In *A.M.A. Leasing*, 283 NLRB 1017 (1987), the Board found that A.M.A. had unlawfully recognized the Respondent Union, which in turn was found to have violated Section 8(b)(1)(A) by demanding and accepting recognition before A.M.A. engaged in normal business operations and employed a substantial and representative complement of employees and by entering into a collective-bargaining agreement under such circumstances. It was ordered to cease and desist from accepting recognition as the employees' collective-bargaining representative until it was so certified by the Board and from giving effect to the collective-bargaining agreement it had executed. It was also ordered to reimburse all employees for all initiation fees, dues, and other moneys paid or withheld from them pursuant to the dues-checkoff and union-security clauses of the agreement with the exception of those employees who had voluntarily joined the Union before August 15, 1984.

Faustino Ramos testified that he went to work for A.M.A. in September 1984 and joined the Union a month later. He paid dues to the Union for about a year and then stopped after being informed that he was no longer required to do so. Sometime thereafter, the initiation fees and dues he had paid were refunded to him and he has never paid a new initiation fee or any dues since. He continued to work at the same job under the same supervision at the Donna plant after Mavo Leasing took over in June 1986 until he was terminated. Francisco Murillo testified that he began working for A.M.A. in 1985. At that time he was a member of the Beef Boners Union Local 100. He has never paid an initiation fee or any dues to the Respondent Union; however, 2 days before he was discharged he filled out a dues-deduction slip and gave it to a union steward but it was never turned in. Michael Beal testified that he began working for A.M.A. in 1985 and continued to work after Mavo Leasing took over. He said that he never joined the Union and did not pay an initiation fee or any dues.

In the cases of Ramos and Beal, the Respondent produced copies of cards signed by each of them which it contends establish that they are members of the Union. The upper portion of each card has a space for designating life insurance beneficiaries and at the bottom, above the signature, it states that the signer is applying for membership in the Union and is designating it as his collective-bargaining representative. Both Ramos and Beal testified that they were given the cards by someone connected with "the insurance" in order to designate a beneficiary. I find that these cards, which were signed by Ramos on November 19, 1984, and by Beal on June 4, 1986, do not establish that either was a member of the Union in February 1990, even if they were effective as applications for membership when they were signed. Likewise, the fact that Murillo signed a dues-deduction slip did not make him a member of the Union. Merely submitting an application does not constitute membership. *Aiello v. Apex Marine Corp.*, 610 F.Supp. 1255, 1260 (E.D. Pa. 1985). In the cases of Murillo and Beal, there is no evidence that they ever tendered initiation fees, paid dues, or complied with the applicable requirements of the Union's bylaws, the usual prerequisites for membership. *Brown v. United Transp. Union*, 573 F.Supp. 22, 26 (W.D. Tex. 1983). Although Ramos testified that he had met those prerequisites when he was first employed at the Donna plant, his initiation fees and dues were refunded to him after the Board's decision in *A.M.A. Leasing*, supra. This effectively terminated his membership in the Union. There is no evidence that he ever subsequently applied for membership, tendered initiation fees or dues, or was granted membership in the Union. Ramos testified without contradiction that during the contract negotiations in

[1] 487 U.S. 735 (1988).

1989, he was told by Union Business Agent Alfredo Nunez that the Union would not consider his opinion concerning the negotiating position it should take and that he was not entitled to request information or to talk to a union representative because he was "not a member of Local 707." Although Ramos testified that he had voted in an election in which Nunez was elected as a union steward, there was no indication as to when that election took place and it could have been prior to the time his initiation fees and dues were refunded, particularly, since Nunez later became a business agent. I do not find the testimony of Cozzo, that all three of these employees attended union meetings and voted in a steward election, sufficient to establish that they were members of the Union because he offered no specifics as to time or place or the basis for such knowledge on his part. Considering all the foregoing factors, I find that the evidence does not establish that Ramos, Murillo, or Beal was a member of the Union in February 1990, when they were discharged.

C. *The Beck Notice Issue*

There is evidence in the record that the Respondent Union had expended funds for nonrepresentational purposes and activities, such as organizing expenses, during the year preceding the discharges. It is undisputed that the Respondent did not give the three employees a *Beck* notice prior to seeking their termination by the employer. The question presented is whether the Union's duty of fair representation imposed upon it an affirmative obligation to inform these employees of the rights provided under *Beck*.

Neither the Court's decision in *Beck* nor that in *Machinists v. Street*, 367 U.S. 740 (1961), on which *Beck* is based, imposes such an affirmative obligation on a union. Counsel for the General Counsel acknowledges this in her brief and has cited no other court or Board decision which does so. The fact that the Board has not yet spoken and has issued an advanced notice of proposed rulemaking seeking the views and comments of interested groups on the question of how labor organizations subject to the Act "can best fulfill their statutory obligations under the *Beck* decision"[2] indicates that the issue is open to differing interpretations. Consequently, without more, I am unable to find that in February 1990 there was an affirmative duty imposed upon the Union by *Beck* to give such notice under peril of being found to have violated its duty of fair representation and Section 8(b)(1)(A) of the Act and subjecting it to the possibility of substantial financial liability. Accordingly, I shall recommend that this allegation be dismissed.

D. *The Alleged Extension of Time to Pay Dues*

On January 25, 1990, Faustino Ramos received a notice from the Union, dated January 23, informing him that his dues were delinquent. The notice stated that he was in arrears for the months of July 1989 through January 1990 in the amount $143.50 and that he had until February 7 to pay or his employer would be asked to discharge him. The notice also stated that if had any questions or was unable to pay the full amount of the arrearage, he should contact the Union by January 31. Ramos testified that for 2 weeks he attempted to reach Cozzo by telephone but was not able to do so until February 6. He told Cozzo that he was not refusing to pay the dues but that he needed more time to get the money. According to Ramos, Cozzo agreed that he would have until Thursday, February 8, to make the dues payment. On February 8, after arriving at work, Ramos was informed by his foreman that he could not work anymore until he straightened things out with the Union. Ramos went to the union office but was told that Cozzo was not available. He testified that he spoke to Nunez and tendered the dues payment in cash but that Nunez refused to take it and told him only Cozzo could accept it and he was on vacation. Nunez told him he could talk to National Union President Frank Stroud but after waiting around for 3 or 4 hours Ramos did not get to see Stroud. The Union has never accepted the dues he tendered and he has not worked at Mavo since February 8, 1990.

Cozzo testified that Ramos telephoned him on the day before the dues payment deadline and said that he wasn't going to pay the dues arrearage until he talked to his attorney who was away and would not be back for a couple of weeks. Cozzo said that Ramos could talk to his attorney but the deadline was going to stand and he did not give Ramos an extension. He also said that an extension of time to pay dues would had to have been in writing and that he has never given such an extension orally.

After considering their demeanor while testifying and the content of their testimony, I credit that of Cozzo over that of Ramos. There is simply no reason to believe that Cozzo would agree to extend the deadline for Ramos for 1 day, to a date on which Cozzo knew he would be on vacation, but then make no provision for the dues being accepted in his absence. Although Ramos denied telling Cozzo that he wanted to consult with his lawyer before paying the dues, he admitted to raising the subject of their legality in his telephone conversation with Cozzo. It is not unreasonable to expect that someone who had previously had his dues refunded to him because they had been illegally collected would want assurances that the current demand for payment was lawful. And it is much more likely that Ramos would seek those assurances from his attorney than from an official of the union that had made the illegal collection. Ramos' testimony was implausible as well as self-serving in the extreme. Although his alleged reason for seeking an extension of the deadline was that he did not have the money, he offered no explanation as to why after allegedly attempting to reach Cozzo for 2 weeks, 1 additional day was all he needed to pay in full. I found the apparent corroborating testimony of Beal to detract from, rather than enhance, Ramos' credibility. Their stories were so similar that they struck me as being the product of collusion. Beal claimed that when he went with Ramos to the union office on February 8, after being discharged, he too had the full amount of his delinquent dues which he tendered in cash. However, there was nothing to suggest that he had been in touch with anyone at the Union about an extension of time to pay or to explain why he was ready to pay on February 8 but not on the previous day. It appears the impetus for the actions of both on February 8 was the fact that they were discharged by the Employer for nonpayment of their dues on that date, not an extension of

[2] See 57 Fed.Reg. 7897 (Mar. 5, 1992).

time to pay the dues.[3] I find the evidence fails to establish that Ramos was given an extension of the dues payment deadline or that the Union violated any fiduciary duty by refusing to accept the dues payment Ramos tendered after the February 7 deadline. I shall recommend that this allegation be dismissed.

[3] I did not believe the testimony of Ramos and Beal that when Nunez refused to accept the dues payment from Ramos, he candidly told them that the Union was retaliating against him for his support of the Beef Boners. It appears that they came up with this to provide a reason for the Union's otherwise inexplicable refusal to honor Cozzo's alleged agreement to extend the payment deadline. Although it is true that Nunez was not called as a witness and the testimony is unrebutted, the Respondent had no reason to expect that his testimony would be necessary. The only allegation in the complaint concerning Nunez was that he refused to accept Ramos' tendered payment on February 8 which was not in dispute.

CONCLUSIONS OF LAW

1. The Respondent, Production Workers Union of Chicago & Vicinity, Local 707, is a labor organization within the meaning of Section 2(5) of the Act.

2. The Employer, Mavo Leasing, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Respondent did not engage in the unfair labor practices alleged in the consolidated complaint.

[Recommended Order for dismissal omitted from publication.]